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ABSTRACT

Less than half of the challenges to unequal state school financing laws have succeeded. And among those challenges that were successful, funding equity has eroded over time and the litigation has been costly and protracted. However, judicial remedy is still a possible means for restoring equity in school financing and improving education. Most of the problems in school finance litigation were raised in the original Rodriguez opinion (San Antonio Independent School District v. Rodriguez, 1973). In that case, the U.S. Supreme Court held 5-4 that disparities in educational spending due to local wealth are constitutionally allowed. The greater part of this research brief, which is based on an article by William H. Clare, evaluates the status of seven fundamental questions concerning school finance litigation and reform raised by this case. The questions are: Does increased spending improve education? How much increased spending is needed? Are local governments as capable as the state to set educational spending levels? Should revenue be redistributed from wealthy to poorer districts? Should the special educational needs of poor children be accommodated? What is the court's role in educational reform? and Is finance reform compatible with educational restructuring? The brief then presents a three-part remedy recommended for adoption by state courts. In basic terms, the three points are: (1) states should be required to establish a base program of substantially equal spending for at least 95 percent of its students; (2) the courts should require states to provide compensatory aid for disadvantaged children; and (3) the courts should require states to develop performance-oriented policies. The final sections of the brief offer a policy analysis and justification of the remedy, an explanation of how part of the remedy has developed recently in school finance litigation and legislative reform, and a consideration of selected examples of thoughtful courts and legislatures becoming more responsive to the practical needs of educational policy. A list of CPRE publications is included. (Contains 22 references.) (JPT)

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REPORTING ON ISSUES AND RESEARCH IN EDUCATION FINANCE AND POLICY

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School Finance Reform: The Role of the Courts

School finance litigation is, at best, a partial success. Less than half the challenges to unequal state laws have been successful. Successful challenges have produced more equitable funding, but the degree of equity typically has been constrained by initial compromise and further eroded over time. The litigation is costly and protracted. Few cases are designed to give extra resources to children from poor families; and the effect of extra dollars on achievement is uncertain (although groups receiving federal compensation aid have made achievement gains).

However, judicial intervention should not be abandoned as a way to improve education finance and quality in the U. S., according to William H. Clune.* In an article published by *Connecticut Law Review*, Clune argues that a three-part remedy distilled from recent cases solves many of the fundamental problems of school finance litigation and justifies renewed confidence in judicial intervention.

This issue of CPRE Finance Briefs summarizes the points presented in the article. The brief evaluates the status of seven fundamental problems of school finance litigation and reform, presents the three-part remedy, justifies the remedy as good policy, and concludes with a look ahead to the emerging concept of "program equity."

School Finance Litigation: Questions and Answers

School finance litigation is plagued by a series of fundamental questions or problems—most raised in the original *Rodriguez* opinion (*San Antonio Independent School District v. Rodriguez*, 1973). In that case, the U. S. Supreme Court held 5-4 that variations in educational spending due to local wealth are permissible under the Constitution. The questions are discussed below:

I The cost-quality question: Does it do any good to give more dollars to poorer schools?

The cost-quality question is fundamental to school finance reform because the whole purpose of reform is to improve student outcomes. Educational policy received a serious blow from social science findings showing a lack of correspondence between dollars spent and student achievement. Research showed, for example, that variation of spending across schools did not correspond to variations in student achievement (controlling for variations in family characteristics); average achievement did not rise through a long period of major increases in real expenditures; and the factors which absorb most increases in spending—increased teacher salaries and reduced class size—did not seem to have much of an impact on student achievement (Odden & Picus, 1992).

Recent studies have established a modest, positive link between increases in spending and student

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achievement (Card & Krueger, 1992; Murnane, 1991). The important points, however, are that: (1) this weak connection is all that could be expected; and (2) somewhat paradoxically, when the reasons are understood, a weak connection is enough to support the need for greater fiscal equity.

Consider findings about the effects of the two most costly educational inputs: class size and teacher salaries. The evidence is quite clear that reduced class size (or more precisely, extra staff) can be used productively, non-productively, or counter-productively with respect to student achievement. Robert Slavin's "Success for All" program produces substantial gains in student achievement by using targeted tutorial assistance (Madden et al., 1991). On the other hand, small (but expensive) reductions in overall class size have little or no effect (Odden & Picus, 1992). And some uses of extra staff (for example, "dumbed-down" remedial instruction and retention in grade) actually hold students back (Shepard & Smith, 1989).

The same kind of picture can be painted for teacher salaries. Eric Hanushek (1991) shows that different teachers produce dramatically different gains in the achievement of comparable students, and criticizes the system for not rewarding these teachers. Richard Murnane's research shows that years of experience produce gains in achievement up to a certain point (Murnane et al., 1991). Salary increases for seniority beyond this point might have other justifications but cannot be expected to improve student achievement. Intensive teacher training in a particular curriculum probably raises student achievement (Adams, 1992), but most staff development is unrelated to instructional goals.

Thus, increased resources clearly *can* make a difference in student achievement but often are used in an unproductive fashion; and this is the most likely explanation for the weak overall correlation between cost and quality. In other words, the cost-quality problem is one of misallocation and mismanagement of resources.

To be sure, the productivity problem in education is difficult. Effective interventions are difficult to identify and even more difficult to adopt and implement. The gap between cost and quality may never be completely closed, and the optimum "return on investment" is difficult to specify.

But depriving poor districts and poor children of an equal chance to be productive seems clearly inequitable and unwise. Even without substantial gains in overall productivity, the best evidence is that some schools and teachers would use the increased resources productively and some would not. Courts are correct in saying that school finance reform gives students the *opportunity* rather than the certainty of an improved education. That, after all, is as true in business as it is in education. Investing in a new business gives the opportunity but hardly the certainty of commercial success.

Of course, the converse is equally true: based on the same evidence of a weak link between cost and quality, society (including courts) is fully justified in insisting that the educational system make better use of increased resources. The big question is not whether to invest scarce resources in education but how to increase student achievement. While society is looking for a better answer, arbitrarily giving some schools and children substantially less resources does not make sense, especially for those children with the most to gain from improved achievement. Require a better education—yes; deprive the poor of resources—no.

2 The problem of choosing a specific spending level: What level of resources should be ordered by a court?

Even granting a reliable relationship between cost and quality, there remains a problem of what *level* of cost to guarantee. Two serious problems exist in this area: the lack of obvious minimum standards and the political dimension of raising educational revenues.

One reason for the absence of an obvious minimum standard for education spending is that *any* amount of increased spending would probably have positive results for students. Thus, courts have no clear-cut choice along a continuum of spending where the most poorly financed students would get something important and the best financed student could always use more. Under these circumstances, it's easy to see why some courts hold that the mini-

This brief is based on an article by William H. Clune entitled, "New Answers to Hard Questions Posed by *Rodriguez*: Ending the Separation of School Finance and Educational Policy by Bridging the Gap Between Wrong and Remedy" (*Connecticut Law Review*, *24*(3), Spring 1992). The brief contains some sections repeated verbatim from that article. Dr. Clune would like to thank Lisa Armstrong for her strong support in producing both the article and this brief.

mum provided by the state for a "basic" education is sufficient.

The political dimension occurs because education must compete with other possible uses of scarce resources (governmental and private). The criteria for making such broad fiscal decisions are impossibly complex and generally held to be inherently political.

Solving (or finessing) the problem of choosing a spending level was probably the greatest strength of "fiscal neutrality," the standard adopted by courts in California and Texas. Since there really is no spending level which can be specified as correct in either a constitutional or a policy sense, the rule of fiscal neutrality gives state and district voters equal access to tax resources but otherwise allows them complete freedom to select spending levels. Thus, the core of the wrong identified by fiscal neutrality is not the deprivation of any particular level of education but the deprivation of a decision about spending level unbiased by differences in taxable wealth.

3 Variations in local spending: Should a court allow local choice of spending level?

Local control of spending level can be justified theoretically because local governments may be as competent as the state in choosing the optimum level of educational benefits. Also, each local government faces a different political situation in raising educational resources.

Fiscal neutrality did permit local variations; and, by removing the inequitable factor of excessively low wealth from local decision making, fiscal neutrality was thought to give districts the freedom to make enlightened decisions.

However, recent cases and legislation have moved away from allowing local spending variations toward a more uniform state standard (with the important exception of the recapture issue discussed next). First, the diverse political situations of local school districts diminish their credibility as competent decision makers about educational benefits—choice of spending levels seems more dependent on tax politics than educational policy. Second, there has been a growing emphasis on a statewide uniform guarantee of resources for all students because they must compete in a statewide and national economy.

Third, state governments have needed to restrict local spending as a means of limiting the size of the state educational budget, since under most equalization plans increased local spending generates more state spending. Such restrictions may create obstacles to equity, local control, or both. Thus, spending levels are now selected mostly on a statewide basis (except for wealthy districts, discussed next).

4 The problem of recapture: Should equality be required everywhere in the state even when it means reduced local spending in wealthy districts?

The one exception to the case for statewide standards is the area of recapture, or redistributing, of tax revenues from wealthy districts to the less wealthy. This is where attempts to limit local control have been most divisive and harmful. Recapture inevitably becomes an important issue under fiscal neutrality (at least in states with a wide range of local wealth).

Fiscal neutrality says that choice of local spending may not depend on local wealth—children should not be either advantaged or disadvantaged because of the wealth of their local district. The only way to make other districts equal without limiting spending in wealthier districts would be to equalize up to the level of the wealthiest district in the state (giving all but the wealthiest district at least a small amount of state aid). But this solution is fiscally impossible.

For example, in Texas, raising all spending to the level of the wealthiest districts would have required four times the revenue of the entire state government (*Edgewood Independent School District v. Kirby*, 1991). To implement fiscal neutrality at a lower level the state must limit the spending of wealthy districts by recapture of local tax resources or explicit restrictions on spending, or both.

In this area, too, there has been a major shift of informed opinion. Recapture now seems very costly, pointless from an educational point of view, and probably educationally harmful. Limitations on spending in wealthy districts hurt the children in those districts and do not help students outside these districts. They suppress a source of educational innovation (the "lighthouse effect"), and remove a source of benign upward pressure on state educational budgets since spending in wealthy districts is one measure of the cost of a first-class education (Levine, 1991; Picus, 1991).[1]

Recapture also has proven the enemy of *any* school finance reform. Having the most to lose,

[1]California's low spending per pupil is caused not so much by the absence of upward pressure from wealthier districts as Proposition 13's restriction of any significant local tax contribution (Picus, 1992). Authors of school finance reform should be careful to retain a substantial, realistic level of local tax support for education (through such devices as the required local share of the state foundation program).

wealthy districts are the most determined foes of fiscal neutrality in constitutional litigation. Much of the delay and uncertainty in reaching stable legislative solutions has revolved around these districts, and the problem of recapture produced at least two state Supreme Court cases (in Texas and Wisconsin) which held equalization (through recapture) *un*constitutional.

Recapture seems preoccupied with the unfairness of extremely high spending at the expense of obtaining important educational benefits for the vast majority of students. Thus, in contrast to all other districts, local spending should be allowed complete freedom to vary in the wealthiest districts of a state. This result is paradoxical under fiscal neutrality but perfectly logical as a matter of sound educational policy.

5 Aid for poor children: Should courts recognize the special educational needs of poor children?

Poverty is the discrimination complained of in equity-based school finance cases. Yet, the possibility that many poor students might live in urban districts of above average wealth, and thus be harmed by a redistribution toward poorer districts, has remained a serious criticism of school finance litigation. In retrospect, the concern about poor students was justified. Although fiscal neutrality left the legislature free to provide compensatory aid, and almost all legislatures do provide some aid, many districts with concentrations of poor students lose money under fiscally neutral remedies (Yudof, 1991). Disadvantaged students suffer both because of the redistribution away from wealthier urban districts and the lack of any special constitutional status for their needs in the turmoil of legislative planning.

The time seems ripe for curing this remedial defect by creating a constitutional right to compensatory education similar to previous recognition of the special needs of handicapped and bilingual students. Constitutional theory has become more focussed on the fate of individual students and sensitive to special problems of poor children in a changing economy. Allowing poor children to get lost in the shuffle of school finance now seems irrational.

6 Judicial role: Can courts find a manageable and constructive role in meeting educational needs and stimulating educational reform?

The traditional concern about whether courts can do any good playing a major role in school finance is perfectly understandable. Yet, the process of crafting a new judicial role is one of the most interesting and satisfying aspects of recent school finance litigation, as perhaps best exemplified in the Kentucky case of *Rose v. Council for Better Education, Inc.* (1989). To be necessarily brief about such a complex topic, answers to traditional questions about judicial role can be grouped as follows:

- **Legal basis**. Modern school finance litigation rests on constitutional language interpreted by courts as obligating state legislatures to create a more uniform system and educational outcomes.

- **Resource allocation**. Courts certainly would have even greater problems than legislatures specifying the optimum level of educational resources, given other spending priorities. But legislatures have a serious problem distributing resources. For example, redistributing resources from wealthy areas to poorer areas creates enormous problems for legislators from wealthy areas. This is why the appropriate judicial role is deferential—leaving the decision about resources to the legislature with narrow standards designed to correct the legislative bias toward inequality—standards like "fiscal neutrality" and "substantial uniformity."

- **Meeting student needs**. Meeting the needs of individual students is literally unthinkable for courts; only schools and classrooms are close enough to understand and help the individual. But courts can do what policy can do: help groups of students and what policy cannot do: meet the needs of groups ignored by legislatures and administrators, for example, poor children and children from poor districts.

- **Educational productivity and reform**. The management of educational reform is certainly far beyond the capacity of courts. But courts can be a catalyst for reform in the other branches of government. David Hornbeck says that serious educational reform often requires the proverbial "800 pound gorilla" to shake things up. The court is one eligible gorilla.

- **Litigation problems**. A major reason for legislative delay is the absence of clear, manageable guidance from courts. Legislatures and administrators can do what they do best when the court structures the boundaries of their task. The approach of the Kentucky court is a model of this kind of pragmatic, structural approach to institutional litigation: requiring substantial uniformity of spending and requiring the legislature to undertake comprehensive reform (Alexander, 1991; *Rose v. Council for Better Education, Inc.*, 1989).

- **Judicial resources**. The expenditure of scarce, judicial resources is justified because of the intensity of student need, benefits to society, and the feasibility of a single,

decisive intervention which produces lasting, structural, change.

7 New developments in educational governance: Is finance reform consistent with restructuring efforts?

Some commentators might wonder whether school finance reform and litigation is somehow contingent on the "old" world of school districts and traditional forms of educational budgeting and thus incompatible with fundamental, structural changes in educational finance and governance. On the contrary, the approach discussed below is not only compatible with major decentralization of governance but may actually be a precondition to it.

One possibility is for state aid to bypass local government and flow directly to families and schools. In that case, the emphasis on the individual student and effective service delivery is much clearer than under the present system. What is an educational voucher other than a guarantee of a "base program" to each student? The Kentucky reform legislation actually ordered educational choice as a mandatory remedy in certain situations (for parents of children in seriously substandard schools); and choice could be one logical component of almost any comprehensive reform. At the same time, courts may prove to have an essential role in guaranteeing the basic fairness of decentralization programs adopted by legislatures (for example, equitable funding and access).

Distributing Education Resources

State education aid formulas are mechanisms for addressing inequities in fiscal capacity and educational need among school districts. Disparities in fiscal capacity can be addressed through one of two basic formulas: a capacity equalizing formula or a foundation aid formula.

- ***Capacity equalizing formulas***, which include guaranteed tax base (GTB) plans, are designed to equalize districts' capacity to raise money for education, but leave them free to determine how much of that capacity they wish to tap. This approach stresses the district's freedom to choose its own tax rate and level of educational spending, rather than guaranteeing any particular per pupil expenditure.

- ***Foundation aid formulas*** guarantee that every student's education is supported by an equal amount of education money, or foundation, regardless of the fiscal capacity of the individual district. Local districts must contribute to this state-prescribed amount, typically by applying a state-established tax rate to a district's property valuation.

The foundation guarantee can be a dollar amount established by the legislature (and reviewed and adjusted annually by that body), pegged to some actual expenditure that changes annually (such as the state average or 95th percentile expenditure), or ties to programmatic requirements.

Source: *Education Finance*. 1990. New Brunswick, NJ: Eagleton Institute of Politics, Rutgers University.

The Three-part Remedy and Policy Justifications

It is clear that the issues and problems surrounding school finance are complex and far-reaching. Solving these problems will be no easy task. However, the remedy proposed here represents some basic steps toward addressing the shortcomings of our current finance system.

The discussion below presents a three-part remedy recommended for adoption by state courts, offers a policy analysis and justification of the remedy, and explains how each part of the remedy has developed recently in school finance litigation and legislative reform. It argues selected recent developments that are examples of thoughtful courts and legislatures becoming more responsive to the practical needs of educational policy.

The Three-part Remedy

In basic terms, the recommended three-part remedy is as follows (numerous legislative models already exist for most details):

1 A base program of substantial equality of spending throughout the state.

Courts should ensure that the state guarantees a base program of substantially equal spending for at least 95 percent of the state's students, with that level of equalization maintained from year to year. The base program could be implemented through a high foundation formula with appropriate adjustments (such as for differences in cost of living, or prices of goods and services), or through a slightly lower foundation formula with a second-tier of guaranteed tax base (GTB) plan, also designed to reflect cost differences. In principle, the founda-

tion plan should include all instructional costs and costs with an impact on instruction, such as facilities and debt repayment to the extent they do affect instruction.

2 A substantial amount of compensatory aid based on a realistic needs assessment of children in poverty (e.g., $1,000 per pupil).

The court should require the legislature to adopt a substantial program of compensatory aid for children affected by poverty ("disadvantaged" in this sense), for example $1,000 per pupil fully proportional to the number of such students in a school. Essentially, the school budget should include the foundation amount plus the compensatory amount for each disadvantaged student. Additional special needs, e.g., handicaps, would increase the budget by additional amounts.

3 Performance-oriented policies designed to increase the effectiveness of educational spending.

The court should require the legislature to develop a set of performance-oriented policies that focus resources on improving student achievement. Such policy options might include: systemic reforms, or coordinated policy interventions, aimed at *curriculum upgrading*; *increased accountability* with appropriate assessments and rewards, punishments, and technical assistance for schools performing above or below acceptable levels); *organizational change*, which gives new kinds of decision-making authority to those who can improve schools (for example, parental choice, site-based governance, and private practice schools run by teachers under contract with a district); and *new methods of teacher compensation* (e.g., extra pay for extra work, superior knowledge and skills, and outstanding performance). Whatever the particulars, experimentation and flexibility must be built into performance-oriented policies since they are new to education and will require time to evaluate and refine.

Policy Justifications

Base Program. The base program is best justified according to each of its important characteristics.

Equality of spending v. equality of tax base. In policy terms, the shift from equality of tax base (for example, GTB plans) to equality of spending (the high foundation concept) is justified because of society's emphasis on student achievement and the uncertainties of the cost-quality relationship.

When a court addresses improving student achievement (through judicial interpretation of state education clauses or legislative will), the logical focus is the actual amount of resources delivered to each student, not the tax base available to the district. A level base program also functions better as the foundation for compensatory aid (so that poor children in different districts get about the same amount of resources throughout the state). The outcome standards of performance-oriented policies work better with equalized spending because performance goals can then be developed in light of available resources (for example, high goals in science could rely on funds for well-trained teachers and science labs).

The 95 percent level of equalization. The question here is how to choose the percentage of state students included in the equalized base program. Any figure such as 95 percent is a compromise between two opposing considerations. On one hand, the logic of fiscal neutrality demands that the percentage be as high as possible. Whatever number of students are included in a single decision about spending level have, to paraphrase the Texas case, "equal access to the state's resources" (*Edgewood Independent School District v. Kirby*, 1991). Exactly in this sense, equal spending is one example of a fiscally neutral remedy. Conversely, the fewer students that are included, the lower the level of fiscal neutrality and the more votes in the legislature there will be for lowering the foundation in exchange for lower taxes in the wealthier districts.

Why, then, not include 100 percent of the students? The answer to this question is the difficulty and futility of reducing spending in the wealthy districts (whether through spending restrictions or recapture of local taxes). At some point of equalization (say between 95 percent and 100 percent), the state will decide *not* to raise spending but rather equalize to a lower point and restrict spending above that point.

If spending restrictions in wealthier districts were easy and beneficial, the 100 percent standard would be ideal. But when spending limits in the wealthy districts are difficult and costly, a level such as 95 percent preserves the best of fiscal neutrality at a lower cost. The votes of the districts with 5 percent of the students are unlikely to lower the level of the base program, while the exemption of those districts from spending limits yields some important benefits.

The specific level of 95 percent of

the state's students was the degree of equalization achieved by the Texas legislature after *Edgewood I*. In fact, the standard of fiscal neutrality (not necessarily equal spending) for 95 percent of students was written into the legislation itself (*Edgewood Independent School District v. Kirby*, 1991). If 95 percent can be achieved by a very populous, very diverse state with over 1,000 school districts, it could be attainable in every state.

The demographics of most states lead to drastic increases in wealth and spending above the level of 95 percent of the students. Hence, under the 95 percent standard, even if a state decided to equalize spending below the 95 percent level, and require spending limits from that level up to 95 percent, the limits would be relatively mild and provoke little political resistance.

Compensatory Aid. Policy justification of the compensatory aid requirement also benefits from a discussion of several distinct points.

Why a constitutional requirement? The requirement of compensatory aid for children affected by poverty is a major departure from fiscal neutrality (which permitted compensatory aid but did not require it). The basis for the constitutional requirement is twofold: a new emphasis on educational outcomes and a structural bias in the legislature against major amounts of compensatory aid. State courts interpreting the common school provisions of state constitutions have discovered an emphasis on more equal outcomes for all children which corresponds to policy concerns about effective participation in the modern economy.

It might be argued that legislative bias against compensatory aid is implausible since such aid is included in practically all school finance packages. Indeed, a few states may already meet the requirement of substantial compensatory aid (e.g., $1,000 per pupil). But such aid ordered on top of strong equalization of the base program confronts the legislature with a difficult "double whammy." Legislative resistance to the New Jersey decree (the only court requiring substantial compensatory aid) seemed to be a cumulative effect of the size of the total tax bill and the "undeserved privileged status" of the urban districts in a tight fiscal situation.

Why a substantial amount of aid? The requirement of compensatory aid should be for a substantial amount because many of the educational interventions which help disadvantaged children catch up to the mainstream are resource intensive. Such interventions include tutoring in academic subjects, and developing special, applied academic programs, working with families, and arranging for social services.

Why the $1,000 amount? The suggested amount of $1,000 per pupil is intended as an example of the meaning of "substantial" and has a basis in educational research. The essential criterion is the cost of educational programs that equalize educational outcomes. For example, $1,000 is approximately the amount required to fund Slavin's "Success For All" program, which aims to move disadvantaged third graders up to grade level in reading (Madden et al., 1991).[2]

Why not other special needs? If children in poverty require protection in the legislative turmoil of school finance reform, why not other children with special needs,

[2]The $1,000 amount could be low if it is really the amount necessary for catch-up in a single *subject*.

such as the handicapped? One answer is the large overlap of poverty classification with the other needs; for example, many urban districts are providing children with special (though not always effective) services by classifying lower-achieving students in one of the special education categories (e.g., learning disabled). Thus, properly managed, the compensatory aid itself is a substantial benefit for such children.

The second reason for not including other special needs is that the other leading category—special education for the handicapped—is already well represented in both state and federal law. Moreover, the interest groups supporting special education are well organized and very effective, while the much larger group of poor children is poorly represented.

Performance-oriented Policies. Performance-oriented policies are needed so that school finance reform leads to increased student achievement and other important educational outcomes. As we have seen, the weak link between cost and quality in education does not justify reducing the resources available to arbitrarily selected groups of students, but it certainly does justify strong social intervention to improve student achievement.

Need for a constitutional requirement (judicial role). Courts

are needed as the catalyst for educational reform because of a bias in the system against an outcome-orientation. One reason for this bias is that weak links between educational inputs, process, and outcomes make it difficult for outsiders to hold schools accountable and risky for schools to measure themselves against outcome standards. Another source of the bias is the understandable preference of members of the system for a higher level of inputs (larger salaries, smaller class sizes, etc.). Still another is the difficulty that the system has raising expectations for lower-achieving students.

The Three-part Remedy in Recent Cases

The three-part remedy was distilled from recent cases. It was developed by identifying three main structural elements of the holdings of recent school finance cases, evaluating those elements in light of modern educational policy, and making refinements as dictated either by policy analysis or historical experience (for example, the great difficulty with the recapture issue in Texas). The result is a prototypical school finance decree—also useful for legislatures, assuming sufficient votes—with a special focus on student achievement. Briefly summarized below are the three elements in recent cases and responsive legislation.

Substantial Equality of Spending as Base Program

Equality of spending has been identified as one of the trends in school finance and is the most prevalent of the three elements in recent cases (Odden, 1992). The Texas court in *Edgewood I* (*Edgewood Independent School District v. Kirby*, 1989) required full fiscal neutrality, and the legislature responded with a much higher foundation program plus a second tier of guaranteed tax base The plan was subsequently struck down in *Edgewood II* (*Edgewood Independent School District v. Kirby*, 1991) because of the allowance of unequalized local supplements in wealthy districts, that is, because of not enough equality.

The Kentucky court (*Rose v. Council for Better Education, Inc.*, 1989) required that schools be substantially uniform throughout the state, and the Kentucky legislature responded with a program keeping all spending within 45 percent of a statewide foundation.

The New Jersey court (*Abbott v. Burke*, 1990) required that spending in poor urban districts be raised to the level of wealthy districts, and the legislature generalized this equal spending approach with a statewide program of substantial equality (the Quality Education Act).

The Montana court simply ordered that the foundation level be raised to include many more school districts (*Helena v. Elementary School District No. 1 v. State*, 1989). In Washington, the court required a minimum program, but the legislature responded with a system dominated by the state and limits on local spending (*Seattle School District No. 1 v. Washington*, 1978).

Compensatory Aid

It appears that the New Jersey court in *Abbott v. Burke* (1990) is alone in making a substantial amount of compensatory aid a constitutional requirement. The emergence of this very important innovation in New Jersey is not surprising since that court has the longest track record of developing a body of law regarding a constitutional clause requiring that the education system be "thorough and efficient."

Performance-oriented Policies

States across the country are developing various kinds of performance-oriented policies independent of school finance litigation. The Kentucky court is alone in the judicial innovation of declaring the whole system of education unconstitutional (not just school finance) and requiring the legislature to enact comprehensive educational reform. After receiving plans from experts in educational policy, the Kentucky legislature responded with a full set of performance-oriented policies: radically upgraded learning goals and teacher training, rewards and punishments for above- and below-average gains in student achievement, and strong local control. Kentucky also introduced selected compensatory education programs, for example, pre-school and social services for disadvantaged students.

"Program Equity:" The Next Generation in School Finance Reforms?

The approach to school finance litigation recommended in this paper is relatively laissez-faire in the role taken by courts toward the other branches of government. Equality of the base program is ordered (the 95 percent rule), but the level and content of the program is left open. Substantial compensatory aid is required, but the legislature ultimately sets the amount. Education reform (performance-oriented policies) is left mainly to the legislature under a few broad judicial guidelines.

An emerging approach, "program equity," could provide more detailed guidance. The basic idea of program equity is to establish the cost of a more ambitious educational program (curriculum) and higher standards of student achievement.[3] Becoming more specific about educational goals has some strong, potential advantages for calculating costs because resources necessary to reach those goals can be identified. For example, if a school is expected to bring students up to a certain level of achievement under new science frameworks, certain resources seem logically indispensable, such as teachers with identifiable knowledge and skills, quality textbooks, and adequate laboratory facilities.

But the program equity approach also involves conceptual and practical difficulties. First, it has the same problem of weak technology as any other approach in education—exactly what are the most productive determinants of science achievement, and what is the maximum possible influence of schooling? Second, how does one deal with the range of inputs which are not "logically" related to a specific educational program but which may strongly affect student achievement in that area—class size, teacher background and experience, safety of environment, social class of fellow students, and so forth?

Third, contrary to the appearance of a clear conceptual framework, the standard-setting exercise seems inevitably subject to purely practical and ultimately political elements—what *level* of achievement will be acceptable and what *cost* of reaching a given level will be considered excessive? Lastly, how does one confront the ever-present problem of educational

[3]In this, it has much in common with the untried "adequacy" theory of school finance litigation: the cost of meeting existing state minimum standards (Harp, 1992).

The Consortium for Policy Research in Education

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The CPRE Policy and Finance Centers are part of a nationwide network of 25 university-based research and development centers whose mission is to strengthen the performance of American students by providing useful and sound information. The research agenda for both Centers is built around three goals:

- To focus research on policies that foster *high levels of learning for all students*, regardless of social or economic background.
- To conduct research that will lead to *more coherence of state and local policies* that promote student learning.
- To study how policies *respond to diversity* in the needs of students, schools, postsecondary institutions, and states; and to learn more about the *connections between student outcomes and resource patterns* in schools and postsecondary academic departments.

In addition to conducting research as described, CPRE publishes reports and briefs on a variety of issues. The Consortium also sponsors regional policy workshops for state and local policymakers.

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change, for example, the possible need to retrain an entire generation of teachers and even dismiss those who cannot implement the new goals for low-achieving students?

The main point here is that pushing the frontier of program equity fits comfortably with the framework developed in this brief. The idea of a "base program" says that dollar equality is the closest we can come to program equity given the multitude of inputs which may affect achievement and the need to satisfy practical and political constraints. "Performance-oriented policies" say that the way to increase student achievement is to create a set of general policies which make all educational spending more productive. And, of course, the constitutional right to compensatory aid recommended in this brief is explicitly based on an educational program (Slavin's) with specific achievement goals and demonstrated costs (Madden et al., 1991) and, thus, really is a first step toward program equity.

Perhaps most important to realize is that program equity may turn out to be enormously influential even if it cannot be defined in a rigorous, scientific manner because of the way it frames questions for policy and research. For example, suppose we ask this question in a serious way:

> In schools with high poverty, and extremely low achievement, what sort of resource package is likely to raise student achievement to the point that the students have at least basic access to American society?

Answers to this question cannot possibly be scientifically precise, but if they are empirically well supported they may justify substantial levels of compensatory aid and point the way to more effective educational practice.

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